

ELECTRONICALLY FILED  
January 25, 2007

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Counsel for the Official Committee Of  
Equity Security Holders Of USA Capital First Trust Deed Fund, LLC

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:  
USA COMMERCIAL MORTGAGE COMPANY,  
Debtor.

) BK-S-06-10725-LBR  
) Chapter 11

In re:  
USA CAPITAL REALTY ADVISORS, LLC,  
Debtor.

) BK-S-06-10726-LBR  
) Chapter 11

In re:  
USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,  
Debtor.

) BK-S-06-10727-LBR  
) Chapter 11

In re:  
USA CAPITAL FIRST TRUST DEED FUND, LLC,  
Debtor.

) BK-S-06-10728-LBR  
) Chapter 11

In re:  
USA SECURITIES, LLC,  
Debtor.

) BK-S-06-10729-LBR  
) Chapter 11

Affects

- ☐ All Debtors  
☒ USA Commercial Mortgage Co.  
☐ USA Securities, LLC  
☐ USA Capital Realty Advisors, LLC  
☐ USA Capital Diversified Trust Deed  
☒ USA First Trust Deed Fund, LLC

) Date: January 24, 2007  
) Time: 3:30 p.m.

**DECLARATION OF MATTHEW KVARDA IN SUPPORT OF MOTION FOR ORDER  
PURSUANT TO BANKRUPTCY CODE SECTIONS 1141 AND 1142 TO ENFORCE  
CONFIRMED DEBTORS' THIRD AMENDED JOINT CHAPTER 11 PLAN OF  
REORGANIZATION AS IT RELATES TO ALLOCATION OF SALE PROCEEDS  
(AFFECTS DEBTORS USA COMMERCIAL MORTGAGE COMPANY AND USA  
CAPITAL FIRST TRUST DEED FUND, LLC)**

1 I, Matthew Kvarda, declare as follows:

2 1. I am a managing director of Alvarez & Marsal, LLC, financial and real  
3 estate advisors to the Official Committee of Equity Security Holders of USA Capital First Trust  
4 Deed Fund, LLC (the "FTDF Committee"). I submit this Declaration in support of the "Motion  
5 For Order Pursuant To Bankruptcy Code Sections 1141 And 1142 To Enforce Confirmed Debtors'  
6 Third Amended Joint Chapter 11 Plan Of Reorganization As It Relates To Allocation Of Sale  
7 Proceeds" (the "Motion")<sup>1</sup> filed by the FTDF Committee.

8 2. The following facts are personally known to me and/or based on my  
9 personal observations. If called to testify thereto, I could and would do so, under oath.

10 3. In connection with the above-captioned cases (the "Chapter 11 Cases"), I  
11 and the members of the engagement team have worked closely with the members of the FTDF  
12 Committee and its other professionals regarding the development of a workable exit strategy which  
13 maximized the potential return to investors in USA Capital First Trust Deed Fund, LLC (the  
14 "FTDF"). These efforts include assisting in the formulation of the "Debtors' Third Amended Joint  
15 Chapter 11 Plan of Reorganization" (the "Plan").

16 4. The Bid Procedures (a true and correct copy of which is attached hereto as  
17 Exhibit "1") approved by the Court pursuant to an order entered November 8, 2006 were carefully  
18 crafted and negotiated such that all overbids and overbid increments would be made to the "Total  
19 Asset Purchase Price," which as defined in the purchase agreement with SPCP Group, LLC (the  
20 "Stalking Horse Bidder") included the combined price for both the FTDF and USACM assets to be  
21 sold. Further, the Bid Procedures provided that qualified bidders must purchase "at least the same  
22 Property being purchased in the Purchase Agreement." Bid Procedures, Section 3(iv). Thus, the  
23 Bid Procedures anticipated that additional assets could be sold at the Auction with the Allocation  
24 remaining unchanged despite any increased asset pool. The primary purpose of these negotiated  
25 terms was to prevent bidders from attempting to artificially allocate their bid in an effort to gain  
26 additional support from one or the other estate.

27 \_\_\_\_\_

28 <sup>1</sup> Capitalized terms not otherwise defined herein have the meaning set forth in the Motion.

1           5.       The issue of requiring that overbids be made on the Total Asset  
2 Purchase Price rather than separately on the FTDF and USA Commercial Mortgage Company  
3 ("USACM") assets, respectively, was of such importance that the Bid Procedures approved by  
4 the Court specifically precluded bidders from attempting to allocate the division of the total  
5 asset purchase price at the Auction. Footnote 1 of the Bid Procedures states:

6                   To clarify, during the Auction, bidders shall make Increased Bids with  
7 respect to the Total Asset Purchase Price and shall not allocate any  
8 Overbid Increment, including the Minimum Incremental Overbid, between  
9 the First Trust Deed Property and the Commercial Mortgage Property.  
10 The allocation of any such Overbid Increment, including the Minimum  
Incremental Overbid, shall be made in accordance with the terms of the  
Plan or subsequent order of the Bankruptcy Court.

11 Without such a provision the FTDF Committee feared that the Official Unsecured Creditors'  
12 Committee for USA Commercial Mortgage Company (the "USACM Committee") might try  
13 to maneuver a play for more money than as negotiated between the parties and, accordingly,  
14 required that the Bid Procedures provide that overbids must be made on the Total Asset  
15 Purchase Price and not separately on the assets of FTDF and USACM. Given the present  
16 dispute over the Allocation, it appears that the FTDF Committee's concerns were not  
17 unfounded.

18           6.       On November 15, 2006, the Debtors filed the Plan. The Plan provides  
19 for the approval of the Sale to the Stalking Horse Bidder, subject to the Auction. The Plan  
20 also includes several key compromises, including a compromise between USACM and FTDF  
21 (the "Compromise"). An integral component of the Compromise was the agreement between  
22 USACM and FTDF as to the allocation of any overbid sale proceeds. Section IV(E)(2)(i) of  
23 the Plan provides that:

24                   The Overbid Allocation shall be 85% to FTDF and 15% to USACM  
25 for any overbid consideration, and any incurred break-up fee or  
26 expense reimbursement obligation (as those terms are used in the  
27 Asset Purchase Agreement) shall be allocated in the same  
28 percentages, except as otherwise provided in the Stipulation  
memorializing the agreement between USACM and FTDF on the  
Overbid Allocation filed by the USACM Committee and the FTDF  
Committee with the Court, under seal, and served on the Debtors as  
confidential information, no later than ten (10) days prior to the  
Auction.

1           7.     While neither the Sale nor the Plan Effective Date has occurred as of the  
2 date this Motion is filed, I believe these events are imminent.

3           8.     The stalking horse bid at the Auction provided cash consideration of \$46  
4 million for the FTDF assets being sold and up to approximately \$550,000 for the USACM assets  
5 being sold. While an allocation based on asset value would have resulted in values of  
6 approximately 99% to FTDF and 1% to USACM, in the spirit of compromise and in good faith,  
7 the FTDF Committee agreed to the 85% to FTDF and 15% to USACM provided for in the  
8 Allocation in the Plan.

9           9.     Prior to the Auction, Compass submitted an initial overbid under which  
10 the proposed purchase price was \$48 million for the FTDF assets and \$8 million for the USACM  
11 assets, subject to adjustment (the "Initial Compass Bid"). Compass elected to purchase  
12 additional assets of USACM other than those that were included in the Stalking Horse's bid,  
13 including all accrued fees and default interest due to USACM as of the close of the Sale.  
14 Compass' successful bid at the Auction resulted in an overbid of approximately \$11 million.

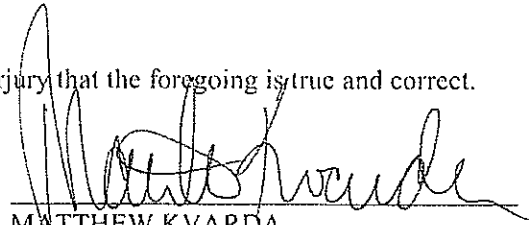
15           10.    Although the Plan clearly provides that the agreed upon Allocation would  
16 apply to all overbid proceeds, including the approximately \$10 million in additional value  
17 contained in the Initial Compass Bid, at the Auction, the FTDF Committee, again in good faith,  
18 and with the understanding that the Allocation would otherwise apply to the Auction proceeds,  
19 agreed that USACM would retain the \$8 million from the Initial Compass Bid (and the FTDF  
20 would retain the additional \$2 million from the Initial Compass Bid). Application of the  
21 Allocation to the increased bid amount would have resulted in \$6.8 million in additional sale  
22 proceeds being paid to FTDF, rather than USACM, which is a significant transfer of value  
23 already made voluntarily by the FTDF.

24           11.    While the USACM Committee did not consent to this arrangement, the  
25 straight percentage allocation on the total \$56 million Initial Compass Bid is 14% to USACM  
26 (\$8 million out of \$56 million ) and 86% to FTDF (\$48 million out of \$56 million), which is, but  
27 for only an 1% difference, the same as the Allocation in the Plan.

28           12.    The Allocation dispute only applies to all overbid proceeds in excess of

1 the Initial Compass Bid. The overbid proceeds at issue are approximately \$9.5 million, after  
2 deduction of the \$1.5 million Break-Up Fee and Expense Reimbursement payable to the Stalking  
3 Horse Bidder.

4 I declare under penalty of perjury that the foregoing is true and correct.

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6   
7 MATTHEW KVARDA

8 Alvarez & Marsal, LLC  
9 Financial and real estate advisor to the Official  
10 Committee of Equity Security Holders of USA  
11 Capital First Trust Deed Fund, LLC  
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